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No. 616

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme

United States Court ~~of Appeals~~

~~FOR THE SECOND CIRCUIT.~~

Miscellaneous Civil.

THE CITY OF BUFFALO,
Plaintiff-Respondent,

vs.

PLAINFIELD HOTEL CORPORATION,
Defendant-Appellant,

SPANN REALTY CORPORATION, E. W. WALTER, as nominee of CENTRAL HANOVER BANK and TRUST COMPANY, THOMAS J. ATCHESON, doing business under the assumed name and style of T. J. ATCHESON GLASS CO., STATE TAX COMMISSION, THE PEOPLE OF THE STATE OF NEW YORK, BUFFALO SEWER AUTHORITY, COUNTY OF ERIE,
Defendants.

ADDITIONAL PAPERS PRINTED BY APPELLANT,

Petitioner

FRED C. MALONEY,
Attorney for Plaintiff-Respondent,
Office and Post Office Address,
65 Niagara Square,
Buffalo 2, New York.

JAMES P. KOHLER & JAMES P. KOHLER, JR.,
Attorneys for Defendant-Appellant,
Plainfield Hotel Corporation, Appearing Specially,
Office and Post Office Address,
109 Broad Street,
New York City 4, New York.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

Supplement to Petitioner's Reply Brief in United State Supreme Court

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IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

THE CITY OF BUFFALO,
Plaintiff-Respondent,
vs.
PLAINFIELD HOTEL CORPORATION,
Defendant-Appellant,
SPANN REALTY CORPORATION, *et al.*,
Defendants.

Letter from Department of State.

THOMAS J. CURRAN
SECRETARY OF STATE

STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
ALBANY 1

FC September 27, 1949.

Mr. J. P. Kohler,
109 Broad St.,
New York City.

Dear Sir:

This office is in receipt of your favor of the 24th inst. Certificate of incorporation of Spann Realty Corporation was filed March 7, 1940, location Buffalo, Erie County.

The above corporation was dissolved by proclamation of the Secretary of State, published December 16, 1946.

Yours truly,

EDWARD F. GOETZ,
Head Clerk.

Referee's Report, with Oath.

STATE OF NEW YORK.

SUPREME COURT—COUNTY OF ERIE.

PLAINFIELD HOTEL CORPORATION,
Plaintiff,
against
SPANN REALTY CORPORATION, GEORGE HANDRULIS, *et al.*,
Defendants.
} Oath.

State of New York,
County of Erie,
City of Buffalo.
} ss.:

I, HARRY J. KELLY, the Referee appointed by an order of this Court, made and entered in the above entitled action, and bearing date the 28th day of February, 1944, to ascertain and compute the amount due the *plaintiff* upon the bond and mortgage upon which this action was brought,

do solemnly swear that I will faithfully and fairly determine the question so referred to me, and make a just and true report thereon according to the best of my understanding.

HARRY J. KELLY.

Sworn to before me, this
25th day of March, 1946.
Catherine L. Barone,
Notary Public,
Erie County, N. Y.

§§ 1016, 721, Sub. 11.

STATE OF NEW YORK.

SUPREME COURT—COUNTY OF ERIE.

PLAINFIELD HOTEL CORPORATION,
Plaintiff,

against

SPANN REALTY CORPORATION,
GEORGE HANDRULIS, *et al.*,
Defendants.

} Report.

To the Supreme Court:

In pursuance of an order of this Court, made and entered in the above entitled action, and dated the 28th day of February, 1945, whereby it was referred to the undersigned, as Referee, to ascertain and compute the amount

due to the *plaintiff*, upon and by virtue of 2 bonds and mortgages upon which this action was brought, and also to examine and report whether in his opinion the mortgaged premises can be sold in parcels.

I, HARRY J. KELLY, the Referee in the said order named, DO REPORT, That before proceeding to hear the testimony I was first duly sworn faithfully and fairly to determine the question referred to me, and to make a just and true report thereon, according to the best of my understanding; that I have computed and ascertained the amount due to the *plaintiff* upon and by virtue of said bond and mortgage, and that I find and accordingly report that there is due to the *plaintiff* for principal and interest on the said bond and mortgage, at the date of this my report, the sum of

Dollars ($).

Schedule A, hereunto annexed, contains a schedule of the documentary evidence introduced before me, and shows the amounts due for principal and interest respectfully, the period of the computation of the interest, and its rate.

Dated at Buffalo, N. Y., this 25th day of March, 1946.

HARRY J. KELLY,
Referee.

Statement of Fred Dudley Kohler.

SUPREME COURT—COUNTY OF ERIE.

PLAINFIELD HOTEL CORPORATION,
Plaintiff,

vs.

SPANN REALTY CORPORATION,
GEORGE HANDRULIS, *et al.*,
Defendants.

Proceedings had and evidence taken before Harry J. Kelly, Referee duly appointed in the above entitled action, by an order of this Court granted and entered therein on February 28, 1944 at a hearing held on March 25, 1946.

State of New York,
County of Erie,
City of Buffalo. } ss.:

FRED DUDLEY KOHLER, sworn as a witness, testified as follows:

I am the Treasurer of Plainfield Hotel Corporation, a corporation organized and existing under the Laws of the State of New Jersey, which is the holder of the bonds and mortgages herein sought to be foreclosed.

On the 20th day of September, 1937, the defendant, George Handrulis, made and delivered to Dr. Charles G. Miller and the plaintiff herein his bond and mortgage for Forty-two Hundred ($4200.00) Dollars with five per cent (5%) interest, said mortgage to be paid in full on the 20th day of September, 1938. (The original bond and mort-

gage offered in evidence and marked Plaintiff's Exhibits "A" and "B".)

Thereafter and on or about the 11th day of August, 1943 the Executor of the Last Will and Testament of Charles G. Miller duly assigned to the plaintiff herein all his interest in and to said bond and mortgage by an instrument under seal. (The original assignment offered in evidence and marked Plaintiff's Exhibit "C".)

The defendant nor any of his successors in interest have made any payments on account of said bond and mortgage and there is now due and owing to the plaintiff the sum of Forty-two Hundred ($4200.00) Dollars, together with interest at five per cent (5%) thereon from September 20, 1937.

The deponent further shows that Spann Realty Corporation, one of the defendants herein, on or about the 7th day of August, 1940 duly executed its bond and mortgage to secure the sum of Eleven Thousand Three Hundred ($11,300.00) Dollars to Charles G. Miller of Southport, Connecticut and the Plainfield Hotel Corporation, said bond to become due two years from the date of the bond and mortgage with interest at four per cent (4%) per annum. (Bond and mortgage offered in evidence and marked Plaintiff's Exhibits "D" and "E", respectively.)

That on or about the 11th day of August, 1943 the executor of the Last Will and Testament of Charles G. Miller by an instrument in writing duly assigned all his right, title and interest in said bond and mortgage to the plaintiff herein. (Original assignment offered in evidence and marked Plaintiff's Exhibit "F".) No payments have been made

on account of principal and interest and there is now due and owing from the defendants the sum of Eleven Thousand Three Hundred ($11,300.00) Dollars, together with interest thereon at the rate of four per cent (4%) from the 7th day of August, 1940.

The following is a description of the mortgaged premises described in first cause of action:

"ALL that lot or parcel of land, with the buildings and improvements thereon in the City of Buffalo, County of Erie, State of New York, bounded as follows: Cassimir Street on the north, Spann Street on the East and Houghton Park on the west consisting of fourteen (14) lots facing the said park according to plans for improvements and a survey dated February, 1911, made by Edward B. Guthrie, Civil Engineer, and such documents of record in the possession of the seller which the seller agrees to furnish to the purchaser, being part of the property known as the 'Miller Estate' and being lots Nos. 1 to 14 inclusive in Block 'F', on said map."

The following is a description of the mortgaged premises described in second cause of action:

"ALL that tract or parcel of land situate in the City of Buffalo, County of Erie and State of New York, and being a part of Lot No. 8, Township 10 and Range 7 of the Buffalo Creek Indian Reservation so called, and being known and described as subdivision lots Nos. 1 to 14 inclusive in Block B and Nos. 1 to 14 inclusive, and 16 to 28 both inclusive in Block D as shown on a map filed in the Erie County Clerk's office under cover No. 855 together with all the unsubdivided lands shown on said map bounded as follows, to wit:

Northerly by the south lines of said subdivision lots Nos. 14 in Block B, 14 and 28 in Block D and 14 in Block F as shown on said map and said lines extended, about 499.04 feet, easterly by the easterly line of said subdivision lots Nos. 1 to 14 in Block B, extended southerly in a straight line to the Buffalo River about 272 feet, westerly by the westerly line of the aforesaid Lot No. 8 Township 10 Range 7, about 650 feet, southerly by a line about 68 feet long extending from the southerly end of the westerly line hereof easterly to said Buffalo River as shown on said map and southeasterly by the northwesterly line of said Buffalo River, excepting and reserving therefrom so much thereof as is included within the bounds of Spann Street and Fedro Street as now laid out as public streets, and to the extent that the same may be so laid out and to the extent that the same may be so laid out, and excepting also so much thereof as may have been eroded by the waters of the Buffalo River, and that any lands which may have accrued to the premises above described by said waters, are hereby conveyed".

The deponent further says that the premises can be sold in parcels.

FREDERIC DUDLEY KOHLER.

Subscribed and sworn to before me
this 25th day of March, 1946.
Harry J. Kelly, Referee.

SCHEDULE A.

One bond bearing date the 20th day of September, 1937, made and executed by George Handrulis of 311–85th Street Brooklyn, New York to Doctor Charles G. Miller of Southport, Connecticut and Plainfield Hotel Corporation of New Jersey, to secure the payment of Forty-two Hundred ($4200.00) Dollars on the 20th day of March, 1938, with interest at the rate of five per cent (5%) per annum. Marked Exhibit "A".

One mortgage of even date with said bond, made and executed by George Handrulis of 311–85th Street, Brooklyn, New York to Doctor Charles G. Miller of Southport, Connecticut and Plainfield Hotel Corporation of New Jersey as collateral security for the payment of the amount mentioned in the condition of the said bond, acknowledged the 20th day of September, 1937 and recorded in the office of the Clerk of the County of Erie in Liber 3315 of Mortgages at page 465 on October 9, 1943. Marked Exhibit "B".

Assignment made and executed by Union and New Haven Trust Company as Executor of the Last Will and Testament of Charles G. Miller to the Plainfield Hotel Corporation, executed the 11th day of August, 1943 and recorded in the office of the Clerk of the County of Erie in Liber 3315 of Mortgages at page 465 on October 9, 1943. Marked Exhibit "C".

One bond bearing date the 7th day of August, 1940, made and executed by Spann Realty Corporation to Charles G. Miller of Southport, Connecticut and Plainfield Hotel Corporation, to secure the payment of Eleven Thousand

Three Hundred Dollars ($11,300.00) on the 7th day of August, 1942 with interest at the rate of four per cent (4%) per annum. Marked Exhibit "D".

One mortgage of even date made and executed by Spann Realty Corporation to Charles G. Miller of Southport, Connecticut and Plainfield Hotel Corporation, as collateral security for the payment of the amount mentioned in the condition of the said bond, acknowledged the 7th day of August, 1940, and recorded in the office of the Clerk of the County of Erie in Liber 2991 of mortgages at page 394 on the 7th day of August, 1940. Marked Exhibit "E".

Assignment of all right, title and interest in foregoing bond and mortgage executed by Union and New Haven Trust Company as Executor of the Last Will and Testament of Charles G. Miller to the Plainfield Hotel Corporation dated August 11, 1943 and recorded in the office of the Clerk of the County of Erie in Liber 3315 of Mortgages at page 468 on the 9th day of October, 1943. Marked Exhibit "F".

STATEMENT

First Cause of Action

Principal of bond and mortgage unpaid — $4200.00.

Interest thereon from September 20, 1937 to March 25, 1946, eight (8) years, six (6) months and five (5) days, at the rate of five per cent (5%) per annum — $1806.00.

Amount due plaintiff this 25th day of March, 1946 — $6006.00.

Clerk's Certificate.

Second Cause of Action

Principal of bond and mortgage unpaid — $11,300.00.

Interest thereon from August 7, 1940 to March 25, 1946, five (5) years, seven (7) months and eighteen (18) days, at the rate of four per cent (4%) per annum — $2542.50.

Amount due plaintiff this 25th day of March, 1946, — $13,842.50.

GRAND TOTAL .....$19,848.50.

Dated: March 25, 1946.

HARRY J. KELLY,
Referee.

Clerk's Certificate.

I, MAY C. SICKMON, Clerk of the District Court of the United States for the Western District of New York do hereby certify that the foregoing are correct copies of the following papers: Letter from Department of State, Referee's Report with Oath, Statement of Fred Dudley Kohler with Schedule A attached.

IN TESTIMONY WHEREOF I have caused the seal of said Court to be hereunto affixed at the City of Buffalo in the Western District of New York this 14 day of October, Nineteen Hundred and Forty-nine.

Mary C. Sickmon
Clerk

(SEAL)

By Edna E. Briggs
Deputy Clerk